

House Bill 216 (AS PASSED HOUSE AND SENATE)

By: Representatives Neal of the 1st, Ralston of the 7th, Miller of the 106th, Burmeister of the 119th, Sheldon of the 105th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to
2 controlled substances, so as to limit the sale and manner of sale of products containing
3 pseudoephedrine; to provide for exceptions; to provide for mitigation of punishment under
4 certain circumstances; to provide for penalties; to restrict the sale, transfer, manufacture,
5 purchase for resale, and furnishing of certain substances; to provide for definitions; to
6 authorize the State Board of Pharmacy to promulgate certain rules and regulations; to provide
7 for licensing and permitting of persons who sell, transfer, purchase for resale, or otherwise
8 furnish or possess certain chemicals; to require certain records to be maintained; to provide
9 for exceptions; to provide for certain forfeitures; to provide for penalties; to provide for
10 certain reports; to provide that it is illegal for a person to possess any substance with the
11 intent to use such substance in the manufacture of a Schedule I or Schedule II controlled
12 substance or to knowingly convey such substance to another for use in the manufacture of
13 a Schedule I or Schedule II controlled substance; to provide for certain considerations with
14 regard to determining whether such substances were possessed illegally; to provide for
15 exceptions; to provide for penalties; to provide for related matters; to provide an effective
16 date; to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to controlled
20 substances, is amended by adding a new subsection (b.1) to Code Section 16-13-30.3,
21 relating to possession of substances containing ephedrine, pseudoephedrine, and
22 phenylpropanolamine, to read as follows:

23 "(b.1)(1) Products whose sole active ingredient is pseudoephedrine may be offered for
24 retail sale only if sold in blister packaging. Such products may not be offered for retail
25 sale by self-service, but only from behind a counter or other barrier so that such products
26 are not directly accessible by the public but only by a retail store employee or agent.

(2) No person shall deliver in any single over the counter sale more than three packages of any product containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients or any number of packages that contain a combined total of more than nine grams of pseudoephedrine or its base, salts, optical isomers, or salts of its optical isomers.

(3) It shall be unlawful for a retail distributor to purchase any product containing pseudoephedrine from any person or entity other than a manufacturer or a wholesale distributor licensed by the Georgia Board of Pharmacy.

(4) This subsection shall not apply to:

(A) Pediatric products labeled pursuant to federal regulation as primarily intended for administration to children under 12 years of age according to label instructions; and

(B) Products that the Georgia Board of Pharmacy, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine or its salts or precursors.

(5) This subsection shall preempt all local ordinances or regulations governing the retail sale of over the counter products containing pseudoephedrine by a retail business except such local ordinances or regulations that existed on or before December 31, 2004. Effective January 1, 2006 the subsection shall preempt all local ordinances.

(6)(A) Except as otherwise provided herein, it shall be unlawful for any person knowingly to violate any prohibition contained in paragraph (1), (2), or (3) of this subsection.

(B) Any person convicted of a violation of paragraph (1) or (2) of this subsection shall be guilty of a misdemeanor which, upon the first conviction, shall be punished by a fine of not more than \$500.00, and, upon the second or subsequent conviction, shall be punished by not more than six months' imprisonment or a fine of not more than \$1,000.00, or both.

(C) Any person convicted of a violation of paragraph (3) of this subsection shall, upon the first conviction, be guilty of a misdemeanor and, upon the second or subsequent conviction, be guilty of a misdemeanor of a high and aggravated nature.

(D) It shall be a defense to a prosecution of a retail business or owner or operator thereof for violation of paragraph (1) or (2) of this subsection that, at the time of the alleged violation, all of the employees of the retail business had completed training under Georgia Meth Watch, the retail business was in compliance with Georgia Meth Watch, and the defendant did not knowingly, willfully, or intentionally violate paragraph (1) or (2) of this subsection. For purposes of this subsection only, the term 'Georgia Meth Watch' shall mean that program entitled 'Georgia Meth Watch' or similar

1 program which has been promulgated, approved, and distributed by the Georgia
2 Council on Substance Abuse.

3 (7) Except as otherwise provided in this subsection, the State Board of Pharmacy may
4 adopt reasonable rules and regulations to effectuate the provisions of this subsection. The
5 board is further authorized to charge reasonable fees to defray expenses incurred in
6 maintaining any records or forms necessitated by this subsection or otherwise
7 administering any other provisions of this subsection."

8 SECTION 2.

9 Said chapter is further amended by adding a new Code Section 16-13-30.4 to read as follows:

10 "16-13-30.4.

11 (a) As used in this Code section and unless otherwise specified, the term 'board' or 'Board
12 of Pharmacy' shall mean the Georgia State Board of Pharmacy.

13 (b)(1) A wholesale distributor who sells, transfers, purchases for resale, or otherwise
14 furnishes any product containing pseudoephedrine must first obtain a license from the
15 Board of Pharmacy; provided, however, that a wholesale distributor that has a valid
16 license as a wholesale distributor under Code Section 26-4-113 shall not be required to
17 obtain an additional license under this Code section.

18 (2) Wholesale distributors licensed under Code Section 26-4-113 shall be subject to the
19 provisions of this Code section in the same manner as wholesale distributors licensed
20 under this Code section.

21 (3) Every wholesale distributor licensed as provided in this Code section shall:

22 (A) Submit reports, upon verbal or written request from the Georgia Drugs and
23 Narcotics Agency, the Georgia Bureau of Investigation, or the sheriff of a county or the
24 police chief of a municipality located in this state, to account for all transactions with
25 persons or firms located within this state; such reportable transactions shall include all
26 sales, distribution, or transactions dealing with products containing pseudoephedrine;
27 and

28 (B) Within seven days, notify the Georgia Drugs and Narcotics Agency of any
29 purchases of products containing pseudoephedrine from the wholesale distributor
30 which the wholesaler judges to be excessive.

31 (4) Whenever any firm or person located in this state receives, purchases, or otherwise
32 gains access to products containing pseudoephedrine from any wholesale distributor,
33 whether located in or outside this state, such firm or person shall maintain a copy of such
34 wholesale distributor's license issued by the Georgia State Board of Pharmacy. Such
35 firm or person shall maintain copies of all invoices, receipts, and other records regarding
36 such products containing pseudoephedrine for a minimum of three years from the date

1 of receipt, purchase, or access. Failure to maintain records to verify the presence of any
2 and all products containing pseudoephedrine being held by a firm or person shall subject
3 such products containing pseudoephedrine to being embargoed or seized by proper law
4 enforcement authorities until such time as proof can be shown that such products
5 containing pseudoephedrine were obtained from a Georgia licensed wholesale distributor.

6 (5) Agents of the Georgia Drugs and Narcotics Agency, agents of the Georgia Bureau
7 of Investigation, and the sheriff of a county or the police chief of a county or municipality
8 in this state in which a firm or person that receives, purchases, or otherwise gains access
9 to products containing pseudoephedrine is located may request to review the receiving
10 records for such products. Failure to provide such records within five business days
11 following such request to account for the presence of such products shall result in the
12 embargo or seizure of such products.

13 (c) A license or permit obtained pursuant to this Code section shall be denied, suspended,
14 or revoked by the Board of Pharmacy upon finding that the licensee or permit holder has:

15 (1) Furnished false or fraudulent material information in any application filed under this
16 Code section;

17 (2) Been convicted of a crime under any state or federal law relating to any controlled
18 substance;

19 (3) Had his or her federal registration suspended or revoked to manufacture, distribute,
20 or dispense controlled substances;

21 (4) Violated the provisions of Chapter 4 of Title 26; or

22 (5) Failed to maintain effective controls against the diversion of products containing
23 pseudoephedrine to unauthorized persons or entities.

24 (d) The Board of Pharmacy may adopt reasonable rules and regulations to effectuate the
25 provisions of this Code section. The board is further authorized to charge reasonable fees
26 to defray expenses incurred in issuing any licenses or permits, maintaining any records or
27 forms required by this Code section, and the administration of the provisions of this Code
28 section.

29 (e) Notwithstanding any other provision of this Code section to the contrary, no person
30 shall be required to obtain a license or permit for the sale, receipt, transfer, or possession
31 of a product containing pseudoephedrine when:

32 (1) Such lawful distribution takes place in the usual course of business between agents
33 or employees of a single regulated person or entity; or

34 (2) A product containing pseudoephedrine is delivered to or by a common or contract
35 carrier for carriage in the lawful and usual course of the business of the common or
36 contract carrier or to or by a warehouseman for storage in the lawful and usual course of
37 the business of the warehouseman.

(f) All products containing pseudoephedrine that have been or that are intended to be sold, transferred, purchased for resale, possessed, or otherwise transferred in violation of a provision of this Code section shall be subject to forfeiture to the state and no property right shall exist in them.

(g)(1) Any person who sells, transfers, receives, or possesses a product containing pseudoephedrine violates this Code section if the person:

(A) Knowingly fails to comply with the reporting requirements of this Code section;

(B) Knowingly makes a false statement in a report or record required by this Code section or the rules adopted thereunder; or

(C) Is required by this Code section to have a license or permit and knowingly or deliberately fails to obtain such a license or permit.

(2) It shall be illegal for a person to possess, sell, transfer, or otherwise furnish a product containing pseudoephedrine if such person possesses, sells, transfers, or furnishes the substance with the knowledge or intent that the substance will be used in the unlawful manufacture of a controlled substance.

(3)(A) A person who violates paragraph (2) of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 15 years or by a fine not to exceed \$100,000.00, or both.

(B) A person who violates any provision of this Code Section other than paragraph (2) of this subsection shall be guilty of a misdemeanor on the first offense and a misdemeanor of a high and aggravated nature on the second and subsequent offenses."

SECTION 3.

Said chapter is further amended by adding a new Code Section 16-13-30.5 to read as follows:
"16-13-30.5.

(a) It shall be illegal for a person to possess, whether acquired through theft or other means, any substance with the intent to:

(1) Use such substance in the manufacture of a Schedule I or Schedule II controlled substance; or

(2) Knowingly convey such substance to another for use in the manufacture of a Schedule I or Schedule II controlled substance.

(b) In determining whether a particular substance is possessed with the intent required to violate subsection (a) of this Code section, the court or other authority making such a determination may, in addition to all other logically relevant factors, consider the following:

(1) Statements by the owner or anyone in control of the substances concerning its use;

1 (2) Prior convictions, if any, of the owner or of anyone in control of the substances for
2 violation of any state or federal law relating to the sale or manufacture of controlled
3 substances;

4 (3) Instructions or descriptive materials of any kind accompanying the substance or
5 found in the owner's or controlling person's possession concerning, explaining, or
6 depicting its use;

7 (4) The manner in which the substance is displayed or offered for sale;

8 (5) The quantity and location of the substance considered in relation to the existence and
9 scope of legitimate uses for the substance in the community; and

10 (6) Expert testimony concerning the substance's use.

11 (c) This Code section shall not apply where possession was by a person authorized by law
12 to dispense, prescribe, manufacture, or possess the substance in question.

13 (d) A person who violates this Code section shall be guilty of a felony and, upon
14 conviction thereof, shall be punished by imprisonment for not less than one nor more than
15 fifteen years or by a fine not to exceed \$100,000.00, or both."

16 **SECTION 4.**

17 This Act shall become effective on July 1, 2005.

18 **SECTION 5.**

19 All laws and parts of laws in conflict with this Act are repealed.